IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6493 OF 2006

The Wadia Charitable Trust. .. Petitioners.

vs.

Yogesh s/o Savailal Shah

& Ors. . .. Respondents.

Mr. D.K. Dhakephalkar i/by M/s. Dhru & Co.
for petitioners.
Mr. A.Y. Sakhare i/by V.R. Tripathi & Associates
for Respondent Nos. 1 to 4.
Mr. Bharat Chaudhary for Respondent Nos. 5 & 6.

CORAM : A.P. DESHPANDE, J.

DATE : 24th November, 2006.

P.C.

. Two orders passed by the City Civil Court, Bombay which are dated 26.4.2006 and 7.9.2006 form the subject matter of this writ petition though only the later order is challenged and impugned.

2. The order impugned stands modified to the following extent on concession from the learned advocates appearing for the respective parties. Hence, no reasons are recorded for the same.

3. It is pointed out that the impugned order only directs the City Survey Officer to carry out the work of fixation of boundary marks after taking into account the entire record of acquisition and deacquisition of the property. Instead the City Survey Officer will carry out the work of fixation of boundary marks after taking into account the acquisition, deacquisition, declaration of slum, transfer effected by the plaintiffs in favour of Vaidehi Housing Society under a sale deed of 25.12.2004 so also the MOU dated August 2005 executed by the plaintiff nos. 1 and 3 in favour of plaintiff no. 4 whereunder FSI has been transferred. It is clarified that these aspects as well need to be taken into account while carrying out the survey.

4. The survey has been directed to be made in regard to land bearing survey no. 356 whereas i is now directed that the survey shall be carried out not only in respect of survey no. 356 but also survey no. 378. Hissa No. 1 and Hissa No. 2 from survey no. 356 is owned by the plaintiffs whereas the defendant no. 3 owns part of survey no. 378. Unless both these survey numbers are surveyed, it will not be possible to completely resolve the dispute. It is made clear that the plaintiffs will bear the expenses of carrying out the survey by the

City Survey Officer and whatever amount to be deposited for that purpose shall be deposited by the plaintiffs immediately on making of the demand by the City Survey Officer. It is also directed that while carrying out the survey of survey no. 356 and Hissa no. 1 and Hissa no. 2 of survey no. 378 all persons who are concerned with the said survey numbers shall be entitled to a notice from the City Survey Officer and the survey shall be carried out after due notice to them with an advanced intimation. This order goes to modify the order impugned in this petition.

5. With the above modification, the writ petition is disposed of.

(A.P. Deshpande, J.)